

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH -V**

C.P. (I.B) No. 32/MB/2024

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Anchal Chopra

Having its registered office at
1301, A Sky Oasis, Sector 9,
Plot No. 29 Ulwe,
Navi Mumbai-410206

.....Operational Creditor/Applicant

Vs

Manav Greys Exim Private Limited

Having its registered address at
Shah and Nahar Industrial Estate,
Dhanraj Mill Compound, Gomata Janta
CHSL,
S.J. Marg, Lower Parel,
Mumbai- 400013, Maharashtra.

.....Corporate Debtor/Respondent

Order Dated: 17.05.2024

Coram

Madhu Sinha,
Hon'ble Member (Technical)

Reeta Kohli
Hon'ble Member (Judicial)

Appearances

For the Operational Creditor: Adv. Indrajeet Hingane (PH)

For the Corporate Debtor: Adv. Prakhar Tandon (PH)

ORDER

1. This Company Petition is filed by Anchal Chopra (hereinafter referred as **“the Operational Creditor/Operational Creditor”**) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as **“CIRP”**) against **Manav Greys Exim Private Limited** (hereinafter called **“Corporate Debtor”**) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called **“Code”**) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs.1,16,25,000/-**. Invoices were raised by the Operational Creditor from June 2019 till December 2021 and the same were not cleared by the Corporate Debtor. Demand notice dated 21st June 2023 was sent to the Corporate Debtor and the same was not replied neither any payment was done by Corporate Debtor. The date of default is stated to be 15th February 2023 as per part IV of the petition.

Brief Facts: -

2. The petition reveals that the Corporate Debtor had hired the Operational Creditor vide letter of appointment dated 20th May 2019. As per the said letter of appointment the Operational Creditor was supposed to receive a salary of Rs.3,75,000/- per month.
3. It is the case of the Operational Creditor that she has provided her services to Corporate Debtor until December, 2021. The Services were on an ongoing basis. Invoices were raised by the Operational Creditor from June 2019 till December 2021 for the services provided by her from time to time. Towards these services, the Corporate Debtor further issued two cheques Dated 15th December 2021 for Rs. 50,00,000/- & Dated 15th January 2023 for Rs. 50,00,000/- with a Covering Letter Dated 30th December 2022, assuring payment of dues for the services provided by the OC.
4. It is further submitted that vide another letter dated 15th February 2023, the Corporate Debtor asked not to deposit the said cheque and promised to make the payment at the earliest. Till date the said payment has not been cleared by them.
5. Further, the Corporate Debtor sought more time, however, even though the Operational Creditor trusted the Corporate Debtor

from the very beginning and complied with all their requests, despite the same the Corporate Debtor failed to clear the outstanding dues.

6. It is the case of the Operational Creditor that the abovementioned letter and issuance of cheques is an admitted liability to be paid by the Corporate Debtor and signed by Director of the Corporate Debtor, wherein, they agreed to pay an amount of Rs. 1,16,25,000/- (Rupees One Crores sixteen lakh twenty-five thousand only)
7. It is further submitted that the Corporate Debtor defaulted in making entire payment for the invoices raised by the Operational Creditor equivalent to Rs. 1,16,25,000/- (Rupees One Crores Sixteen Lakh Twenty-Five Thousand only) and the said amount is outstanding upon the Corporate Debtor. Demand notice dated 21st June 2023 was sent to the Corporate Debtor and the same was not replied neither any payment was done by Corporate Debtor and the debt remains unpaid till date. Hence the present petition.

8. The Corporate Debtor has denied each and every allegation or averment made in the company petition.
9. It is the case of the Corporate Debtor that petition is not maintainable on the ground of the pre-existing disputes between the parties. The Operational Creditor was hired as a sales consultant. However, the terms and conditions with regards to the payment of remuneration to the Operational Creditor were based on the target achievement. However, the Operational Creditor failed to achieve the required target and thus due to that the Corporate Debtor has failed to generate the profit in the business.
10. It is further submitted by the Corporate Debtor that they had bonafide intention of making payment to the Operational Creditor and therefore they had issued the two cheques each of Rs.50,00,000/- dated 15th January 2022 and Rs. 50,00,000 dated 15th January 2023 but due to the insufficient funds in the bank account the Corporate Debtor has requested to not deposit the said cheques and promised to make the payment at the earliest.
11. It is submitted by the Corporate Debtor that due to the non-operation of the business the bank account of the Corporate Debtor is not having sufficient funds.

12. The case of the Corporate Debtor is further that the petition under section 9 of the IBC is required to be filed strictly as per the Form prescribed under the relevant rules. However, the present Petition is not in the prescribed Form and therefore, the same is liable to be dismissed as per the prescribed form for a petition under Section 9 of the IBC, the authorized representative is required to sign the petition at the bottom and mention his name and designation along with such signature. However, the present Petition does not mention the name and designation of the authorized representative of the Petitioner at the bottom, as prescribed' in the Form in the relevant rules. Thus, the above petition is not in prescribed form and therefore liable to be dismissed.

13. It is further submitted that the Petitioner has filed the present petition using this Hon'ble Tribunal as a recovery forum, which is against the intent of this Code by placing their reliance on the landmark judgment of the Hon'ble Supreme Court in the case of 'K Kishan vs. Vijay Nirman Company Private Limited [2018 SCC Online SC 1013/'has further opined that creditor's cannot use the Insolvency and Bankruptcy Code, 2016 either prematurely or for extraneous considerations or as a substantive for debt enforcement procedures.

14. It further stated that the Insolvency and Bankruptcy Code, 2016 cannot be used in terror to extract sum of money even though it may not be finally payable as adjudication proceedings, are still pending. The object of the Code is to put the insolvency process against a corporate debtor only and not to act as a recovery forum.

Findings

15. We have heard the Ld. Counsels for the parties and perused the documents available on the record with their able assistance.
16. From the perusal of the documents on record it is evident that the Operational Creditor has issued invoices for the services provided by her for each month starting June 2019 till December 2021 which remains unpaid till date. It is the case of the Operational Creditor that it has been repeatedly requesting the release of the payments of the amount due which have been already admitted by the Corporate Debtor.
17. The Counsel for the applicant submitted that the cheques amounting Rs.50,00,000/- dated 15th January 2022 and Rs. 50,00,000/- dated 15th January 2023 were issued by the Corporate Debtor but has not been cleared. Thereafter, vide letter dated 15th February 2023 the Corporate Debtor requested the Operational Creditor not to deposit the above cheques on the account of insufficient funds itself substantiates the contention of the counsel of the Operational Creditor that the liability

already stands admitted by Corporate Debtor. The letter dated 15th February 2023 is reproduced herein-

MANAV GREY'S EXIM PVT. LTD

A-2/348, Shah & Nahar Industrial Estate, Dhanraj Mill Compound, Sitaram Jadhav Marg, Lower Parel,
Mumbai - 400 013. Tel : 496 4275 / 76 3040 9275/76 Fax: 91-22-3040 3003

15.2.2023

To,

Ms. Anchal Chopra
Office No. 16, 24B, 1301A,
Sky Oasis, Plot No. 29,
Navi Mumbai – 410206.

Sub: **Your Outstanding Dues.**

Dear Madam,

We humbly request you to please do not deposit the cheques which are issued against your outstanding dues as we are genuinely struggling to arrange for the funds to be able to honour the same.

We understand it has been quite substantially delayed. We would want to reassure you that we are doing our best to arrange for the funds as quickly as possible.

For your quick reference the details of the cheques are as under:

1. Ch. No. 312752 Dt. 15.12.2022, State Bank of India, Ghatkopar Branch for Rs. 50,000,000/-
2. Ch. No. 312753 Dt. 15.01.2023, State Bank of India, Ghatkopar Branch for Rs. 50,00,000/-

Thus, it can be observed from the above extract that the Corporate Debtor has categorically stated that it has suffered several financial constraints and thus is unable to make the payment against the invoices

18. Further the counsel for Corporate Debtor submitted that petition is not maintainable on the ground of the pre-existing disputes between the parties. The Operational Creditor was hired as a sales consultant. However, the terms and conditions with regards to the payment of remuneration to the Operational Creditor were based on the target achievement. However, the Operational Creditor failed to do achieve the target and due to that the Corporate Debtor has failed to generate the profit in the business.

19. On the perusal of the appointment letter dated 20th May 2019 which is placed on record wherein clause 2 clearly states that Rs. 3,00,000/- will be the fix pay for the services provided by the Operational Creditor and the remaining Rs. 75,000/- shall be paid as variable based on the performance of Operational Creditor. Thus the Bench is of the considered view that the contention of the Corporate Debtor with regards to the payment of remuneration to the Operational Creditor were based on the target achievement is baseless and that only Rs. 75,000/- was the variable pay, additionally the Corporate Debtor has failed to provide any record showing that there was inefficiency on the part of the Operational Creditor with regards to the targets to be achieved as per the terms of the appointment letter. The said appointment letter is reproduced as under-

MANAV GREY'S EXIM PVT. LTD

**A-2/348, Shah & Nahar Industrial Estate, Dhanraj Mill Compound, Sitaram Jadhav Marg, Lower Parel,
Mumbai - 400 013. Tel : 496 4275 / 76 3040 9275/76 Fax: 91-22-3040 3003**

LETTER OF APPOINTMENT FOR ADVISOR / CONSULTANT

Ref No: HR/20/Del/20/05/2019

Date: 20/05/2019

Ms. Anchal Chopra,

Address: 1301, A, Sky Oasis, Sec 9, Plot No. 29, Ulwe, Navi Mumbai – 410 206.

Dear Ms. Chopra,

Welcome to the Manav Grey's Exim Pvt. Ltd. team.

With reference to the discussions you have had with us, we are pleased to appoint you as "Sales Consultant" for our Group companies on the following terms and conditions:

1. You will be paid a consolidated amount of Rs. 3,75,000 (Rupees Three Lac Seventy Five Thousand only) per month.
2. The above consolidated amount will consist of the following: a) Rs. 3,00,000 per month as fixed pay, and b) Rs. 75,000 per month as variable pay which is linked to your performance and that of the company.
3. This appointment is for a period of five years effective date of your joining and may be renewed on a mutual basis. This arrangement is with effect from 01/06/2019.

20. Further it is stated in the reply that the Corporate Debtor would make the payment against the said invoices once its financial health improves. It is in reply to the present petition only that the Corporate Debtor for the first time has raised the issue regarding the targets not been achieved by the Operational Creditor, and the Corporate Debtor in the same breath again mentions that they are willing to pay the amount provided they are given some time to make the payment.

21. In our considered view, Corporate Debtor cannot approbate and reprobate at the same time and the admission of debt is clear. It is clear from the above reply that the allegation of pre-existence of dispute between the parties is a mere feeble argument by the

Corporate Debtor and there is nothing on record to show that it is a genuine dispute.

22. Therefore, after considering and perusing the facts and circumstances of the present case, we are of the considered view that the Petitioner has been able to establish that there is an existence of “operational debt” which was due & payable and there is a “default” committed by the Corporate Debtor.

23. Accordingly, the above Company Petition is ‘admitted’ with the following:

ORDER

a. The above Company Petition No. 32/IBC/MB/2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered **Manav Greys Exim Private Limited.**

b. **Mr. Ashok Kumar Golecha**, having registration No. IBBI/IPA- 002/IP- N000932/2019- 2020/12973 having email address akgolecha9@gmail.com is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of **Rs.2,00,000/-** towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, CP/IB 32 of 2024 is **admitted**.

SD/-

MADHU SINHA

MEMBER (TECHNICAL)

/Aakansha/

SD/-

REETA KOHLI

MEMBER (JUDICIAL)